Supreme Court, U.S.
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No. 99-[redacted]

In The
Supreme Court of the United States

JOHN KOJO MENSAH,
Petitioner

v.

ST. JOSEPH COUNTY FAMILY INDEPENDENT AGENCY ET AL,
Respondent

On Petition For A Writ of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF PROHIBITION AND/OR MANDAMUS

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65pp

QUESTIONS PRESENTED FOR REVIEW

In the case of *Corrugated Container Corp. v. Community Service Administration*, D.C. Va. 1977, 429 F.Supp. 142 this United States Supreme Court ruled that mandamus is appropriate where there is an expressed mandate in a statute which government officials do not obey, or where these officials are acting outside the zone of their permissible discretion and contrary to the law.

The questions presented in this case are:

1. Whether a Writ of Prohibition and/or Mandamus should issue against the respondent, United States and its government officials, and federal agencies in the meaning of the Administrative Procedure Act, §§ 551 et seq. and 701 et seq. of title 5 including 28 § 1361 for the 15 years of wanton acts of constitutional rights violations carried out covertly to the irreparable injury and harm of this pro se petitioner and his minor children?

2. Whether a Writ of Prohibition and/or Mandamus should issue against the state officials under 28 USC § 1361 and the judgement of the Family Court vitiated in the meaning of 42 USC § 1983; the Uniform Child Custody Act, (UCCJA), 28 USC 1738A; due to lack of subject matter jurisdiction, fraud and abuse of discretion carried out in violation of petitioner's due process rights and the Fourteenth Amendment of the United States Constitution?

LIST OF PARTIES TO THIS PETITION

All parties do not appear in the caption of the case on the cover. A list of all parties to this petition before this United States Supreme Court is a follows:

1. Honorable Carol Jennifer, INS District Director, (Detroit), and her successors.

2. United States Immigration and Naturalization Service, (INS).

3. Honorable George Tenet, Director Central Intelligence Agency, (CIA) and his successors.

4. United States Central Intelligence Agency, (CIA).

5. Honorable Thomas E. Schumaker, Michigan Family Court Judge and his successors.

6. Cindy Theilin, Supervisor Michigan Family Independent Agency, (FIA) and her successors including Douglas Howard, Executive Director, FIA and his successors.

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PETITION FOR PROHIBITION AND/OR MANDAMUS

Pro se petitioner John Kojo Mensah respectfully prays that a Writ of Prohibition and/or Mandamus issue against the listed federal and state respondents for his injuries from this 15 years of orchestrated campaign of terror and rights deprivation are severe and irreparable. Relief sought is not available in any other court because petitioner presented this cause to the Northern Indiana U.S. District Court, U.S. Court of Appeals (7th Circuit), Western Michigan U.S. District Court, U.S. Court of Appeals (6th Circuit) and the Michigan Court of Appeals; in each instance, the federal respondents induced the court to tactfully misconstrue and misinterpret the complaint in order to render judgement that is contradictory to precedence setforth by this Supreme Court. This United States Supreme Court is therefore the court of last resort.

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY THE COURTS.

1. John Kojo Mensah v. United States of America, No. 99-151 Order Den. Reh. (US Supreme Court 2/22/00)

2. John Kojo Mensah v. United States of America, No. 98-3514 Order Den. Reh. En Banc. (7th Cir. 1/22/99) (unpublished)

3. John Kojo Mensah v. United States of America, No. 98-3514 Order Den. Motion for a Writ of Mandamus/Emergency Stay/Injunction. (12/22/98) (unpublished)

4. John Kojo Mensah v. St. Joseph County Family Independent Agency Et Al, No. 981726, Order Den. Reh. (6th Cir. 9/7/99) (unpublished)

5. John Kojo Mensah v. St. Joseph County Family Independent Agency Et Al, No. 981726, Order Affirming District Court Dismissal, (6th Cir. 8/11/99) (unpublished)

6. Letter from Hon. Senator Evan Bayh, Re: Private Relief Bill. (Wash. D.C. 4/8/99)

7. Letter from Hon. Senator Carl Levin, Re: Private Relief Bill. (Wash. D.C. 6/7/99)

8. Letter from Hon. Congressman Tim Roemer, Re: Private Relief Bill. (Wash. D.C. 2/8/99)

9. Letter from Office of Vice President, Al Gore, Re: Exec. Level Intervention. (White House, 9/3/97)

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13. John Kojo Mensah v. St. Joseph County Family Independent Agency et al, No. 1:98cv 146gq. Order dismissed 5/21/98.

14. In re: Mensah minors, No. 214053. Order Den Appeal 10/22/98.

STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

Invoking federal jurisdiction under 28 USC § 1331, Petitioner brought suit in the Northern Indiana, and Western Michigan District Courts. Appellate court jurisdiction is based on 28 USC § 1291 since petitioner seeks review of the final decision of the United States District Courts. Petitioner seeks a Writ of Prohibition and/or Mandamus to enjoin illegal covert actions of the listed respondents; his petition for a Writ of Certiorari was also before this court under these cases No. 99-151 and 99-1297 (99A435).

The jurisdiction of this court is invoked under 28 USC §§ 1254(1), and 2101; also 28 USC § 1251. Pursuant to Supreme Court Rule 29.4(b) and (c); petitioner states that 28 USC § 2403(a) apply in this case, and a copy of this document shall be served on the Solicitor General of the United States, room 5614, Dept. of Justice, 950 Pennsylvania Ave., Washington D.C. 20530-0001. Pursuant to 28 USC § 451 and 28 USC § 2403(b) petitioner states that the lower court did not certify to the State Attorney General the fact that the constitutionality of an act of congress was drawn into question.

◆

PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

1. Administrative Procedure Act, 5 USC § 702:

Right of Review: A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action, within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United

States seeking relief other than money damages and stating a claim that an agency or officer, employee thereof acted or failed to act in an official capacity under color of legal authority shall not be dismissed nor relief therein denied on the ground that it is against the United States or that the United States is an indispensable party. In any such action the United States may be named, and a judgement or decree, may be entered against the United States: Provided that any mandatory or injunctive decree shall specify the Federal official or officers (by name or title), and their successors in office, personally responsible for compliance.

2. Mandamus Relief, 28 USC § 1361: Action to Compel an officer of the United States to perform his duty.

The district court shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

3. Fifth Amendment, United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

4. First Amendment, United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridg-

ing the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

5. Fourth Amendment, United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

6. Eight Amendment, United States Constitution:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

7. Fourteenth Amendment, United States Constitution:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

8. Eleventh Amendment, United States Constitution:

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizen or subjects of any Foreign State.

9. Thirteenth Amendment, United States Constitution:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

10. Uniform Child Custody Jurisdiction Act, 28 USC § 1738A:

Full Faith and Credit Clause: The appropriate authorities of every state shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another state.

11. Michigan Child Welfare law, MCL 712A.2(b)(1) and (b)(2):

Whose parent or other person legally responsible for the care and maintenance of such child, when able to do so, neglects or refuses to provide proper or necessary medical, or other care necessary for his health, or who was abandoned by his parents, guardianship to MCL 712.2(b)(1).

Whose home or environment by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian or other custodian is an unfit place for such children to live in, to-wit: MCL 712A.2(b)(2).

12. 42 USC § 1983:

Every person who, under color of any state, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizens of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunity secured by the Constitution laws, shall be liable to

the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

This is a case involving 15 years of U.S. Immigration and Naturalization Service, (INS) sanctioned covert campaign of terror and rights deprivation carried out under color of law or legal authority in collaboration with the Central Intelligence Agency, (CIA) and the previous and present directors of both federal agencies; collectively referred to as "federal respondents," "covert operatives," "federal operatives," "federal agents," "INS or CIA agents," "INS or CIA operatives," or "operatives". Petitioner alleges that he and his minor children suffered and continue to suffer adversely from INS and CIA agency sanctioned legal wrong with murderous intent in violation of the First, Fourth, Eight, Thirteenth Amendment; and the Due Process Clause of the Fifth Amendment of the United States Constitution.

The said federal agencies' sanctioned legal wrong carried out against petitioner and his minor children also include violations of Fourteenth Amendment protection rights carried out in conspiracy under color of law by state actors such as Judge Thomas E. Schumaker, (Michigan Family Court) and Cindy Theilin, Michigan Family Independent Agency, (FIA), both sued or appearing concurrently in their official capacity for injunctive relief, and individual capacity for monetary/compensatory and punitive damages; as well as violations of the Full Faith and Credit Clause of the Uniform Child Custody Jurisdiction Act, (UCCJA). Petitioner further allege that his "injury in fact" noted in this brief falls within

the zone of interest intended to be protected or regulated by relevant statute, or constitutional guarantee as defined by the Administrative Procedure Act, (APA) (5 USC §§ 551, 702-706) as reviewable actions since agency's actions are arbitrary, capricious, contrary to law and thus constitute an abuse of discretion. Activities that are liable to a court mandated stay or Writ of Prohibition under this statute and relief in the nature of Mandamus under 28 USC § 1361; and for injunctive relief under 42 USC § 1983.

Fifteen years of extensive systematic acts of terror and rights deprivation orchestrated by the federal and state respondents against this petitioner and his minor children caused horrendous hardship and resulted in multiple irreparable injuries including but not limited to: years of social isolation, migraines, public humiliation, starvation, devastation, anguish, horror, vomiting, memory flashes, chronic fatigue, homelessness, fear, severe anxiety, nervousness, heart-murmurs, nightmares, panic-attacks, burns, scars, dissociative patterns, maladaptive behaviors, emotional distress, irreparable mental injuries, etc., etc. These 15 years of intensive terror activities directed to intimidate, aggravate, induce, entrap, harm, injure, and cause the murder of petitioner included but not limited to the following:

Count I. Terror Campaign--INS and CIA agents or operatives orchestrated hundreds of death-threats through various mediums such as placing a gold bullet at my door, used a dead pigeon, a funeral flag, a plastic grenade, workplace posters, explosions and gunfire at my back door, including radio broadcast, print, televised media messages, as well as staged episodes at the Public Library, banks, Post Offices, hair salons, with some incidents involving uniformed police officers, etc. During this period INS and CIA operatives subjected petitioner to a super-intensive surveillance of 24 hour stalking in and out of buildings and in traffic. These covert operatives sprayed chemicals into my home that caused a burning

sensation on the human eye, leaving a red pigment and used sedative drugs to incapacitate petitioner for various purposes including (CIA agents) entering his hotel room at night in London, UK while sedated to get into his Lap-top computer to alter contents of a letter addressed to President Clinton in 1995. Nearly 20 letters and faxes sent to the President were never replied and could have been intercepted. Federal agents used various covert techniques to block a petition to the U.S. State Department and addressed to the U.S. Ambassador to Britain, Hon. Admiral Crowe in London. Other foreign government entities like customs, immigration, and local law enforcement were induced by the federal respondents to engage in orchestrated acts of entrapment. These included officials at Department S.O.-16 of Britain's Scotland Yard Police Headquarters.

Operatives frequently entered petitioner's homes to use various unknown substances to contaminate food and engaged in other forms of food tampering. Also planted noisemaking devises in the walls, plumbing system, ceiling, and appliances in petitioner's homes which were detonated at will including the use of thunderous banging, and loud explosions; both in the U.S. and abroad; to elicit hallucination and inflict other irreparable mental and emotional injuries. Such terror techniques were also used to cause years of sleep-deprivation.

These federal operatives used hi-tech capability to manipulate electronic devises like TV, alarm clocks, telephones, radios in petitioner's home via remote control to cause hallucination and inflict psychological injuries and for other covert purposes. INS and CIA operatives consistently orchestrated acts of entrapment or arrest-trap against this petitioner at public places like the local bank, public library, grocery store, Post Office, church, children's school, restaurant, movie theatre, gas station, etc., etc. and consistently endangered petitioner's life and the lives of private individuals who were induced to carry out acts of innuendo to facilitate entrapment.

These threats of danger persist daily including the use of crude haircut to facilitate arrest traps and orchestrated gruesome acts of sexual innuendo carried out openly at each possible opportunity to facilitate entrapment. INS agents inflicted a 1 inch wound under the left eye of my 1 year old infant with a sharp edged object in order to provoke/entrap this petitioner into arrest at the Elkhart Child Development Center.

Count II. Invasion of Privacy--The federal respondents lay siege to petitioner's homes these 15 years by evacuating surrounding neighbors, collaborating with landlords, obtaining entry codes to home electronic alarm systems from petitioner's wife to enable frequent easy access. Agents also mounted Thermal-Imaging cameras from all adjacent homes in order to visually watch petitioner and violate his privacy while within the confines of his home; planted bugging devices in the electric receptors, light switches, and power sockets on the walls and inside furniture and cabinets in our homes. Operatives further wiretapped all phones in our homes, place of employment, and carried-out frequent illegal entries, searches and seizures confiscating court/legal papers, volumes of graduate school dissertation, airline tickets barely days before travel, including planting viruses on computers and removing various personal items for covert purposes and psychological inducement. These included mail tampering and censorship which allowed agents to block business and employment opportunities, including efforts to seek relief from further rights deprivation.

With advance research capability in psychic phenomenon, operatives are able to hide in adjacent rooms of apartments or duplex or two story house to use telepathic surveillance to invade petitioner's thoughts and dreams to monitor his mental processes around the clock at his home and workplace, and to obtain first hand information on his daily planned routine in order to contact various establishment to orchestrate acts of entrapment with employees prior to his arrival. With

this capability INS and CIA operatives induce television programmers to use petitioner's private thoughts to perpetrate various forms of innuendo on sitcoms, and most popular TV as well as radio shows both here in the U.S. and while in graduate school in Britain; excerpts from private conversations are frequently used for such purposes. Similar acts of covert inducement against other victims are regularly carried out on most live-recorded TV shows; often characterized by sexual innuendo.

Count III. Deprivation of Education--The federal respondents also used computer viruses to damage petitioner's graduate dissertation papers and to frustrate efforts to seek legal or judicial intervention. INS agents managed to confiscate petitioner's MBA degree in conspiracy with Webster University, St. Louis, MO; and then used covert techniques to undermine petitioner's Ph.D. admission to British Universities. Similar act of sabotage was done at Walden University to undermine Ph.D. admission.

Count IV. Employment Deprivation--Federal respondents actively engaged in intensive acts of workplace harassment for the past 15 years, this included the use of gruesome acts of sexual innuendo perpetrated through the rank and file; techniques which also serve as a catalyst for entrapment as well as to inflict severe emotional distress and mental injuries. These federal agency sanctioned covert terror techniques caused constant incidents of altercations, unbearable stress, anguish and anxiety with daily episodes of name-calling, open insults, forms of insinuations or provocation such as inducing co-workers to block petitioner's path, invade his space, use of obscene gestures; and forms of sexual innuendo, with supervisors openly participating; all under the watchful eye of hidden cameras planted by operatives. The filing of complaints with the Equal Employment Opportunity Commission, (EEOC) proved to be worthless since federal respondents have the capability to undermine that process. Since

1995 the federal respondents have induced this petitioner into a "forced-labor" of permitting only employment of menial temporary factory jobs mostly lasting no more than 4 weeks due to intensive incidents of orchestrated harassment; despite two graduate business degree qualifications and past experience of running two multimillion dollar enterprises which were both sabotaged by the federal respondents. Any efforts to engage in other business enterprises is quickly undermined, including two attempted internet start-ups which could be worth millions of dollars had it not been undermined.

Count V. Banishment and Ostracism--The federal respondents carried out continued intensive covert acts of inducement at petitioner's local church, workplace, college campuses, Pilot's Club, Professional Conferences, Retreats, etc. which led to years of banishment and total orchestrated ostracism from religious fellowship, alumina membership or any personal and organizational affiliation. These comprehensive covert terror techniques also resulted in an orchestrated social isolation and banishment in which INS and CIA operatives with their massive manpower of field agents ensured that petitioner was alienated from society. With a daily average of over 300 hundred active operatives engaging in various covert acts, these federal agents used coercion and inducement to alienate and isolate petitioner for these past 15 years from friends, acquaintances including his family of origin; parents and sibling living abroad, while each family member is also placed under intensive surveillance by the CIA. The annual estimate of such extensive terror campaign range in millions of dollars a year; its worthwhile to note here that the cold-war allowed the United States Intelligence Services, to establish such elaborate covert network--only there is no national security interest here except the persecution, terror and repression of private persons.

The respondents INS and CIA have so far terrorized petitioner and his minor children in 11 countries across 3 conti-

nents; such ruthless and horrifying campaign was done in the absence of any criminal wrongdoing. To undermine efforts to seek relief, operatives deprived petitioner the right to legal counsel and also induced federal and state court judges and other judicial officers in U.S. District Courts in South Bend, IN, Grand Rapids, MI and the Court of Appeals in Chicago and Cincinnati and the Michigan Court of Appeals to deny relief from such terror campaign and rights deprivation. The federal respondents effectively deprived this petitioner of the right to total liberty and freedom.

Count VI. Marital Deprivation--The federal respondents used extensive covert techniques to sabotage and totally wreck petitioner's marriage. INS operatives spent months to engage in daily mental telepathic inducement of petitioner's fiancee from their stakeout in an adjacent apartment prior to the marriage, and then subsequently approached her when she was most susceptible, and induced her into the conspiracy to entrap her fiancee in exchange for an unlimited acts of sexual intercourse. Following this shocking inhuman gesture, operatives begun to engage the soon to be Mrs. Rebecca A. Mensah in a pattern of INS organized sexual orgies in petitioner's apartment in Grand Rapids, MI. These acts were also carried out after the wedding ceremony in a room next to our Honeymoon suite, and did continue for months, and years throughout the marriage. Later the then Mrs. Mensah became disenfranchised and attempted to quite after her husband, this petitioner built her a 4 bedroom Bi-level home, but the federal agents threatened blackmail. To her surprise federal agents had taken secret photographs of the acts of sodomy; therefore after days of intimidation involving INS agents walking in and out of our home to speak to her during petitioner's absence, Mrs. Mensah decided to go on with the conspiracy to entrap and/or murder of her husband, (petitioner). They had disclosed to her that they intended to cause the death or murder of her husband.

While they gave Mrs. Mensah her payoff in sexual activity, INS agents frequently planted a secret miniature microphone in her ear and induced her to continually antagonize and provoke this petitioner in our home. This technique caused intense chaos in the marriage, and were linked with similar acts of provocation perpetrated on petitioner's workplace through employees with the intention to overwhelm and entrap him to engage in some unruly behavior to facilitate an arrest for a disorderly conduct. These covert terror acts went on for the entire six years of marriage. The intense chaos and heated argument from the induced tension and argument were continually monitored by respondents via Thermal Imaging cameras while the voice data were also recorded. Voice data recorded from these covert acts were scrambled and reconstructed to secretly induce a pre-selected jury which the federal respondents were later to mastermind at the Family Court in Michigan in conspiracy with judicial officers. Subsequently petitioner filed a complaint at the Northern Indiana U.S. District Court in February, 1997 for redress, but INS agents induced Mrs. Mensah to kidnap the Mensah children to Michigan. Prior to executing this act of reprisal, the federal agents instructed the then Mrs. Rebecca Mensah to empty our family bank accounts in the amount of nearly ten-thousand dollars ($10,000.00). After months of no contact with the children, petitioner filed for divorce in Elkhart, Indiana Superior Court. But INS agents preceded divorce trial with another drastic covert measure.

INS operatives went as far as to orchestrate the death of petitioner's wife in a car/train accident, and induced coroner Jeanette Albert, 505 Brandywine Dr., in Goshen, IN 46526; train driver, Michael E. Woods, Niles, MI; the Funeral Director at the Rieth-Rohrer-Ehret Funeral Home, 311 S. Main St., Goshen, IN and other individuals including the Elkhart County (Indiana) Sheriff's Department (certain Cpl. David Gordon involved) to cover up the scheme, see fake death certificate (appendix 16). With the consent of petitioner's wife INS

agents put her under heavy anaesthesia and glued a sculptured image of her face on her forehead, sprayed heavy makeup on it, and passed oxygen tubes into her nose underneath the "mask". She was fed intravenously at night while laying in the casket. This top secret covert act allowed INS operatives to place petitioner's wife under a false identity in the federal "witness" protection program.

The fake death and the relocation was executed to avoid a legal disclosure in divorce proceeding in Indiana of the 6 years of severe acts of sodomy and ritualistic sexual acts carried out by INS and CIA agents in conspiracy with my wife in our homes while this petitioner and his minor children lay sedated in the same room. The sedative provided by the federal respondents was a tasteless, odorless clear liquid administered in petitioner's drinking water served by his wife. In other instances, operatives came into our home and sprayed other sleep-inducing chemical into the master bedroom prior to petitioner's arrival home thus allowing agency orchestrated acts of sodomy involving his wife to occur in adjacent rooms. These sexual acts were then audio transmitted simultaneously via hi-tech bugging devises into the master bedroom where petitioner lay in a trancelike state with the children in the next room. These acts occurred throughout the 6 years of marriage and prior. Similar acts of sodomy and ritualistic sexual acts occurred on 1st Class trains and in hotels across Europe and in the U.S. on every family vacation. These and other extensive covert acts of terror were done to inflict irreparable mental and emotional injury, and also to induce petitioner to commit a criminal sexual conduct and undermine his United States naturalization application which the INS has refused to process since filing in March of 1996.

The extensive acts of adultery also resulted in over 9 incidents of secret abortions, and a secret life birth by my wife while we were still married. INS agents used special drugs to induce premature labor and then placed the child in hiding

and later united her with petitioner's wife in the witness protection program after the funeral rites were concluded; her sexual paramour, certain Boone Powell of Grand Rapids, Michigan was also relocated with her after a similar staged death. Both co-conspirators were compensated in millions of dollars. The federal operatives also benefited financially from the "death" and relocation of the two co-conspirators. These covert acts can only be characterized as gruesome, horrific and inhuman. They actually constitute cruel and unusual punishment, Thirteenth Amendment violation. Petitioner's injuries and that of his minor children are irreparable; not knowing the consequences of what the Post-traumatic stress would be after ultimate relief has been granted by this court. What petitioner writes here is the 15 years tragedy of "government" sanctioned terror against private citizens and persons, and we only come to the United States Supreme Court seeking remedy and relief; a court of last resort.

Count VII. Due Process Violation--Following the "death" of petitioner's wife, agents further induced Family Court Judge, respondent Thomas E. Schumaker (Centreville, MI) and his clerks and prosecutors Doris Leo, Chuck Herman and referee De Voe including respondent Cindy Theilin, FIA to use a fraudulent judicial proceeding to hold my minor children captive and placed with a non-nurturing relative stranger with a history of child abuse and alcoholism despite the risk of harm to them while mourning the "death" of their mother. The fraudulent jury trial was done with the assistance of court-appointed attorneys; respondent Michael A. Mestelle, Kevin Kleidon and David Tommlinson and a pre-selected jury panel carried out by court clerk Cathleen Coleman, in order to hand down a predetermined verdict; due process 14th Amendment violation. In the absence of any history of abuse or neglect as mandated by Michigan Child Welfare Law; the bogus neglect petition maintained that petitioner was delusional for filing complaint in federal court to seek injunction against

the federal respondents from years of terror campaign and rights deprivation; contrary to the Indiana State Court which had earlier on 10/29/97 granted petitioner his right to custody of the children in consistency to the provisions of the Parental Kidnapping Prevention Act, (PKPA) upon the "death" of his wife prior to a divorce trial.

The Family Court judge arbitrarily ordered no phone contact with the children; only supervised visits at the FIA were allowed where employees like Sandy Leslie, Linda Jo Skipski, Sandy Khorlaff, supervisor Sandy Dorin and others engaged in acts of innuendo consistently in conspiracy with the federal respondents to facilitate arrest-trap. Subsequently petitioner terminated visits at the FIA since Judge Schumaker refused to permit visits at a neutral location. On 7/16/99 a termination order was issued by certain Judge Susan Dobrich after another fraudulent proceeding to further the conspiracy. Petitioner then filed a timely appeal and two subsequent motions to enjoin enforcement of the termination order pending disposition of the appeal as required by court rules, but Judge Dobrich has refused to respond to both motions in violation of petitioner's due process 14th Amendment right. The Michigan Appeals Court could not review such motion unless the Family Court has issued a ruling on it.

The United States Justice Department is not a criminal, terrorist organization and the Attorney General Janet Reno has consistently opposed directing the power of the department at any person in an unwarranted manner. However petitioner has been so severely victimized. Petitioner extend his gratitude to the Solicitor General for not framing a response to the original petition for a Writ of Certiorari but, received no reply to his plea for a settlement conference. The horror of 15 years of terror is horrendous. The extensive and atrocious nature of these covert acts and the multiple injuries inflicted on this pro se petitioner and his minor children including; multiple violations of U.S. Constitutional Laws; the

total loss of personal liberty and freedom; and the fact that there is very strong indication that these covert terror campaign will continue absent a court mandated intervention in the form of a Writ of Prohibition and/or Mandamus relief, this scenario merit such extraordinary remedy. Petitioner earnestly pray this United States Supreme Court to grant such a remedy as a matter of great urgency since the harm and injury are so irreparable. The minor children have not seen their father for months and are illegally deprived of contact since October 1997. In this instance the power of the U.S. Justice Department has been directed at us in an unwarranted manner and such a relief is owed to petitioner in the form of Mandamus. Furthermore, relief requested can be granted by merely ordering cessation of conduct complained of by petitioner. See *Helton v. U.S.*, D.C. Ga. 1982, 532 F. Supp. 813.

REASONS FOR GRANTING THE WRIT

Issuance of a writ of prohibition in conjunction to granting a writ of certiorari to review the judgement and opinion of the United States Court of Appeals for the Seventh and Sixth Circuit in this case is appropriate because in both instances petitioner's injuries are horrendous and irreparable; the violations of constitutional law are multiple, and the appellate ruling in this case have been contradictory to this Supreme Court.

1. **Whether a Writ of Prohibition and/or Mandamus should issue against the respondent and its government officials and federal agencies in the meaning of the Administrative Procedure Act, §§ 551 et seq. and 701 et seq. of title 5 including 28 § 1361 for the 15 years of wanton acts of constitutional rights violations carried out covertly to the irreparable injury and harm of this Pro se petitioner and his minor children?**

Section 1361 of title 28 and the Administrative Procedure Act, (APA), §§ 551 et seq. and 701 et seq. of title 5, provide mandamus relief or stay of agency action in a scenario such as this where a clear duty is owed petitioner or where there is clear abuse of discretion involving severe violations of Constitutional rights causing total loss of personal liberties and freedom; irreparable harm, injuries and threat of continued violation absent a court mandated intervention. See *Grant v. Hogan,* C.A.3 (Pa.) 1974, 5 05 F.2d 1220. Even in areas generally left to agency discretion there may well exist statutory standards delimiting scope or manner in which such discretion can be exercised, and mandamus will lie in such situations when standards have been ignored or violated as in this case. *Davis Associates, Inc. v. Secretary, Dept. of Housing and Urban Development,* C.A.1 (N.H.) 1974, 498 F.2d 385.

Under 5 USC § 705, a controlling factor to determine whether or not an order of an administrative body should be stayed pending appeal and judicial review of administrative order is whether there will be irreparable injury to the petitioners as alleged in this case. *Associated Securities Corp. v. Securities and Exchange Comm.,* C.A.10, 1960 283 F.2d 773. Review of administrative action under APA's arbitrary and capricious standard is presumed in the absence of statutory language or legislative intent to the contrary. See *Conservation Law Foundation of New York, Inc. v. Clark,* DC Mass. 1984, 590 F.Supp. 1467. Also judicial review of administrative order may be obtained without exhausting administrative remedies when administrative remedies are inadequate; such as in this case, or when petitioner seeking review may suffer irreparable harm in the absence of immediate review. *Milena Ship Mgt. Co. Ltd. v. Newcomb,* ED La. 1982, 804 F.Supp. 846.

Consistent to petitioner's complaint per section 705; a major factor to be considered in passing on a motion to stay

an administrative order pending judicial review is whether irreparable damage would be suffered by petitioner if stay were denied; *Hamlin Testing Laboratories, Inc. v. U.S. Atomic Energy Comm.*, C.A.6 (Mich) 1964, 337 F.2d 221. A threshold for stay of administrative action pending judicial review is a showing of irreparable injury if stay is not granted; horrendous hardship and irreparable injuries as alleged by this pro se petitioner. *Justus v. Zimmy,* DC Cal. 1965, 250 F.Supp. 719. The scope of this title includes to determine the constitutionality of an agency's conduct. *Doe v. U.S. Civil Service Comm.*, D.C. N.Y. 1980, 483 F.Supp. 539. Although agency decision is entitled to some presumption of regularity, there are limits to that rule, such as this scenario where an agency action is totally arbitrary, capricious, or otherwise not in accordance with law, See, *Preston v. Heckler,* C.A.9 (Alaska) 1984, 734 F.2d 1359.

Petitioner is likely to prevail on the merits of his allegation against the respondents upon review; a major factor to be considered in passing a motion to stay an administrative order. Since petitioner and his minor children have been isolated vulnerable targets to the said agencies, no harm will result to others or the public from this stay of agency action. *Hamlin Testing Lab, Inc., v. U.S. Atomic Energy Comm.*, C.A.6 (Mich.) 1964, 337 F.2d 221. Facts of petitioner's alleged 15 years of federal agency sanctioned campaign of terror, persecution and repression; legal wrong of rights deprivation suffered had no basis and that it was an abuse of discretion, and not according to law. *Monmouth Legal Serv. Co. v. Carlucci,* D.C. N.J. 1971, 330 F.Supp. 985. Thus in this extremely difficult instance, a reviewing court may set aside an agency action that is arbitrary, capricious, or abuse of discretion such as this case. See, *Montana Power Co. v. Environmental Protection Agency,* C.A.9 (Mont.) 1979, 608 F.2d 334. Based on above facts, petitioner has standing under APA (5 USC § 701-705) for a Writ of Prohibition to issue against the federal agencies (INS and CIA), the noted agency officials and their successors.

Petitioner also has adequate grounds for standing under Section 1361 of title 28 as well as for mandamus relief to be granted for these reasons: a/ that he has clear rights to the multiple constitutional rights violations alleged under the First, Fourth, Fifth, Eighth, Thirteenth, and Fourteenth Amendment of the Constitution. b/ Violations of which the listed respondents have a clear duty to honor and protect, or restore after 15 years of atrocious violations causing irreparable harm and injuries. c/ Petitioner has no adequate remedy available in kind or capable of affording full relief. See, *Sheehan v. Army and Air Force Exchange Service,* C.A.5 (Tex.) 1980, 619 F.2d 1132; d/ Relief sought in the nature of a mandamus is within the scope of this section 1361. *Etheridge v. Schlesinger,* D.C. Va. 1973, 362, F.Supp. 198. A Writ of Mandamus will lie upon showing that petitioner has a clear right to relief sought as noted above, and respondents are under a clear nondiscretionary duty to perform the act requested, and petitioner has exhausted all other avenues of relief such as a Private Relief Bill in Congress with additional direct petitions to the Chairmen; House Subcommittee for Immigration (Hon. Lamar Smith) and the Senate Committee on Immigration (Hon. Spencer Abraham), appendix 10, 11, 12; Executive level intervention, Office of the Vice President, Al Gore, appendix 13; administrative relief, appendix 14, as in this scenario. *Stieberger v. Heckler,* S.D. N.Y. 1985, 615 F.Supp. 1315. Also that petitioner has no adequate remedy and there is every indication that petitioner will continue to suffer irreparable harm absent judicial intervention. *Clayton Brokerage Co. of St. Louis, Inc. v. Commodity Futures Trading Com'n.,* D.C. Mo. 1982, 548 F.Supp. 1015.

A Writ of Mandamus will lie in this scenario where relief requested can be granted merely by ordering cessation of conduct complained of by petitioner against the listed respondents namely invasion of privacy, electronic surveillance (Thermal Imaging cameras, electronic ease-dropping, wire tapping, illegal searches and seizure; orchestrated acts of se-

vere inducement, around-the-clock stalking in and out of buildings (terror techniques) and forms of entrapment; ostracism and banishment; employment/economic, financial, religious, and educational deprivation, etc. See, *Helton v. U.S.*, D.C. Ga. 1982, 532 F.Supp. 813. Total deprivation of personal rights and freedom.

Sovereign immunity is not a bar to suit against a public official if the official is acting in excess of his authority or his authority is unconstitutional or is being exercised in an unconstitutional manner as in this scenario; this is true regardless of whether petitioner is seeking to enjoin an action of public official or seeking to compel the public official to act. *Cortright v. Resor.*, D.C. N.Y. 1971, 325 F.Supp. 797. Further more this section 1361 of title 28 providing for action in the nature of mandamus to compel a federal officer or employee to perform a duty owed to this petitioner, permits "flexibility in remedy," so that injunctive and declaratory relief are not inconsistent with its jurisdictional basis. *Crawford v. Cushman*, C.A.2 (Vt.) 1976, 531 F.2d 1114. While the scenario in this case poses a great danger to petitioner's life it is similarly dangerous to the public at each daily incident of orchestrated entrapment or arrest-trap at public places such as the Public Library, Post Office, banks, gas stations, restaurant, shops, theatre, including work place harassment, etc. The public who are induced to perpetrate various acts of innuendo exposes themselves to a great threat of harm. Under this severe threat of harm to human life there is precedence that the great public importance of an issue such as this militates in favor of its prompt resolution by means of mandamus or declaratory relief as presented by this petitioner. See, *National Wildlife Federation v. U.S.*, 1980, 626 F.2d 917, 200 U.S. App. D.C. 53.

2. Whether a Writ of Prohibition and/or Mandamus should issue against the state officials under 28 USC § 1361 and the judgement of the Family Court vitiated in the meaning of 42 USC § 1983; Uniform Child Custody Jurisdiction Act, (UCCJA); due to lack of subject matter jurisdiction, fraud and abuse of discretion carried out in violation of petitioner's due process rights and the Fourteenth Amendment?

In the meaning of 28 USC § 1361, petitioner seeks to join respondents Judge Thomas E. Schumaker, (Family Court) his successors and judicial officers and Cindy Theilin, (FIA) and Douglas Howard the Executive Director, (FIA) and his/her successors, to mandamus relief sought in this instance. The precedent for such a scenario can be found in the case of *Marquez v. Hardin,* D.C. Cal. 1969, 339 F.Supp. 1364 where this United States Supreme Court ruled that; although state was not an "indispensable party" in suit to compel Secretary of Agriculture to ensure that all needy school children participating in program under National School Lunch Act, § 1751 et seq. of Title 42, be provided with free or reduced-price school lunch and to issue standards of eligibility, inasmuch as state had direct interest in matter and its joinder would make complete relief possible, state was a party which should be "joined if feasible." Petitioner's alleged due process, Fourteenth Amendment violations (Count I) presented in U.S. Supreme Court case No. 99-1297 (99A435) seeking a Writ of Certiorari maintained that the state officials were in joint conspiracy with the federal respondents, thus allowing the Family Court to perpetrate the mentioned due process right violation by tampering with jury selection/fraud, abuse of discretion to deprive petitioner custody of his children despite the absence of all jurisdiction. Indiana Court granted custody to petitioner earlier on 10/29/97 in consistency to provisions of PKPA; thus the violation of the Full Faith and Credit Clause of UCCJA, by the Family Court, (Count II). The minor children have been irreparably injured becoming

withdrawn and disassociated showing signs of maladaptive behavior; and will continue to be so harmed with denied right to visit, and be reunited with their natural father, this petitioner. Thus the state actors or respondents used the Family Court to determine the merits of petitioner's complaint filed at the Northern Indiana District Court against a federal agency as per 28 USC § 1331; in violation or interfering with petitioner's First Amendment rights, (Count III).

In another scenario, this court ruled that Wyoming and New Mexico, as beneficiaries of upper Colorado river basin fund, were not indispensable parties to action in nature of Mandamus such as in petitioner's case, to prevent commissioner of Bureau Reclamation and Secretary of Interior from unlawfully allowing waters of reservoir impounded behind Glen Canyon dam on Colorado river to flow into Rainbow Bridge National Monument and to require those officials to perform their statutory duties and take adequate protective measures to preclude impairment of Rainbow Bridge National Monument. See *Friends of the Earth v. Armstrong,* D.C. Utah 1973, 360 F.Supp. 165. Therefore the listed state officials; Judge Schumaker and the judicial officers and the FIA officials and their successors could be enjoined jointly with the federal respondents. Furthermore the two parties acted in joint conspiracy to carry out constitutional right violations alleged by the petitioner. Consequently their joinder with the federal respondents will make complete relief possible.

Under this question, pro se petitioner seeks a declaration that State Family Court Decree was void as a violation of due process 14th, and 1st Amendment right; see *Catz v. Chalker,* 142 F.3d 279 (6th Cir. 1998). There is no Eleventh Amendment immunity in this instance according to the law and the domestic relation exception do not apply. Domestic relations exception to federal jurisdiction applies only where plaintiff sues in federal court for divorce, alimony, or child custody, that is not the case here emphasis added; the child custody

aspect of petitioner's constitutional claim is incidental. Indiana State Court already granted custody to petitioner prior to Michigan Family Court interference. The alleged jury tampering and the predetermined verdict handed down through such fraudulent act in a court of law at the presence of respondent Judge Schumaker and his co-conspirators; court-appointed attorney Mestelle at the very instant; constitute due process violation. This would seem to directly impact Family Court decree and the care and custody of petitioner's children; however judgement obtained by fraud, or by a court without jurisdiction as stated above in this scenario or in violation of due process right (abuse of discretion) as carried out by respondents is void. See, *Banner v. Banner,* 45 Mich. App. 148, 206 NW2d (1973); *Jackson City Bank & Trust Co. v. Frederick,* 271 Mich. 538, 260 NW 908, (1935) and *Hatcher v. Hatcher,* 129 Mich. App. 753, 343 NW2d 498, 1983. Besides custody decision had already been made and granted to petitioner in consistency to provision of the PKPA by the Indiana State Court upon the "death" of his wife. Thus Michigan Family Court interfering with such custody ruling constitute a violation of the Full Faith and Credit Clause of UCCJA.

Furthermore as in *Catz v. Chalker,* no where does this petitioner make a general constitutional challenge to any Michigan law or rule of procedure; he simply attacks as unconstitutional the manner in which the Michigan Family Court presided over by respondent Judge Thomas Schumaker, proceeding was conducted, emphasis added. The court ruled under *Catz v. Chalker,* that cases stating that to avoid the reach of the *Rooker-Feldman* doctrine, a case must represent a "general challenge" rather a "specific grievance" do so in the context of direct attack on the substance of the State Court decision. Here the claim that survives claim preclusion, as outlined above are directed to the procedure used by the Arizona Court, procedure that Judge Echols found, if true, to be "shocking," similar to petitioner's case where fraud, jury tampering

in the presence and knowledge of a state judge, court-appointed attorneys, FIA social workers to the eminent violation of his due process right amid direct protest to a court-appointed attorney, Mestelle. The court in *Catz v. Chalker,* continued, "Thus, permitting jurisdiction in this case does not contravene the heart of the *Rooker-Feldman* doctrine, the prohibition of reviewing the substance of the state court judgement." See, *Sun Valley Foods, Co. v. Detroit Marine Terminals, Inc.,* 801 F.2d 186, 188-89 (6th Cir. 1986). Where the court noted that although the district court "has no authority to review final judgement of a state court in judicial proceeding, *Feldman,* 460 U.S. at 482, 103 S.Ct. at 1315...a federal court "may entertain a collateral attack on a state judgement which is alleged to have been procured through fraud, deception, accident, or mistake..." such as in petitioner's complaint. *Resolution Insurance Co. v. State of North Carolina,* 397 F.2d 586, 589 (4th Cir. 1968), also *Levis v. East Feliciana Parish Sch. Bd.,* 820 F.2d 143, 146 (5th Cir. 1987). Based on above, due process challenge to state court proceedings not barred by *Rooker-Feldman* doctrine.

Ex Parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908) permits plaintiff-petitioner to seek injunctive relief under 42 USC § 1983 to restrain state officials sued in their official capacity from engaging in unconstitutional conduct. As long as petitioner has proven standing, his claim under section 1983 can be both monetary damages (individual capacity), and injunctive relief (official capacity) as in *Los Angeles v. Lyons,* 461 U.S. 95, 105, 103 S.Ct. 1660, 1667, 75 L.Ed.2d 675 (1983). Although a state and its agencies may be immune from damages and injunctive relief in federal court, state officials are not immune under the Eleventh Amendment. Therefore petitioner pray this court to grant a Writ of Mandamus and/or Prohibition to enjoin the state officials in the meaning of 28 USC § 1361 and 42 USC § 1983, and issue a declaration that the State Court decree as a violation of due process (14th Amendment) and/or First Amendment is void.

Petitioner swear under penalty of perjury that the facts alleged herein in this petition are true based on his personal knowledge and belief, and that "injury in fact" has occurred, and such multiple injuries, and horrendous hardship continue to inflict irreparably harm unless the court enjoin collectively the actions of the federal respondents; Hon. Carol Jennifer, INS District Director, her successors and the INS; Hon. George Tenet, CIA Director, his successors and the CIA including state respondents Judge Thomas E. Schumaker, Family Court Judge, and his successors; Cindy Theilin, FIA Supervisor, her successors and Douglas Howard the FIA Executive Director and his successors immediately.

CONCLUSION

Based on the above facts, petitioner earnestly pray this United States Supreme Court as a matter of great urgency and judicial imperative to issue a Writ of Prohibition and/or Mandamus in that his injuries, and injury to his minor children over these past 15 years are so severe and irreparable, that absent a court mandated intervention such harm and injury will continue while daily incidents of orchestrated attempts of entrapment pose a dangerous threat to his life and to the public who are induced to participate through acts of innuendo, etc.

Respectfully submitted,

JOHN KOJO MENSAH,
Pre se Petitioner

816 1/2 Fulton Street
Elkhart, IN 46514
Ph/Fx (219) 296-0616

_____
Notary Public

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

[Address Omitted in Printing]

February 22, 1999

Mr. John Mensah
816 1/2 Fulton Street
Elkhart, IN 46514

Re: John Kojo Mensah
v. United States
No. 99-151

Dear Mr. Mensah:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,
/s/ William K. Suter
William K. Suter, Clerk

App. 2

Case No. 98-3514
United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

January 22, 1999

JOHN KOJO MENSAH
Plaintiff - Appellant

v.

UNITED STATES OF AMERICA
Defendant - Appellees

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division. No. 98 C 360
Robert L. Miller, Judge

BEFORE: Hon. Walter J. Cummings, *Circuit Judge;* Hon. Ilana Diamond Rovner, *Circuit Judge;* Hon. Diane P. Wood, *Circuit Judge*

Upon consideration of the VERIFIED MOTION FOR REHEARING FOR WRIT OF MANDAMUS OR EMERGENCY STAY OF AGENCY ACTION OR PRELIMINARY INJUNCTION (EN-BANC) PENDING JUDICIAL REVIEW, filed on January 15, 1999, by the pro se appellant,

IT IS ORDERED that the motion is DENIED.

Case No. 98-3514
United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

December 22, 1998

JOHN KOJO MENSAH,
Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,
Defendant - Appellees

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division. No. 98 C 360
Robert L. Miller, Judge

BEFORE: Hon. Walter J. Cummings, *Circuit Judge;* Hon. William J. Bauer, *Circuit Judge;* Hon. Michael S. Kanne, *Circuit Judge*

The following is before the court:

1. VERIFIED MOTION FOR WRIT OF MANDAMUS OR EMERGENCY STAY OF AGENCY ACTION OR PRELIMINARY INJUNCTION PENDING JUDICIAL REVIEW, filed on December 17, 1998, by the pro se appellant.

2. AGREED WRIT OF MANDAMUS-EMERGENCY PRELIMINARY INJUNCTION OR STAY OF AGENCY ACTION PENDING JUDICIAL REVIEW, filed on December 19, 1998, by the pro se appellant.

3. BRIEF IN SUPPORT OF APPLICATION FOR WRIT OF MANDAMUS TO STAY ACTION OR EMERGENCY PRELIMINARY INJUNCTION PENDING JUDICIAL REVIEW, filed on December 17, 1998, by the pro se appellant.

IT IS ORDERED that #1 is DENIED.

Case No 98-1726
United States Court of Appeals
For the Sixth Circuit

◆

JOHN KOJO MENSAH
Plaintiff - Appellant

v.

ST. JOSEPH COUNTY FAMILY INDEPENDENT AGENCY; ST. JOSEPH COUNTY FAMILY COURT; RUTH LANE; MICHAEL A. MESTELLE
Defendant - Appellees

◆

BEFORE: Siler and Gilman, Circuit Judges; Graham, District Judge

Upon consideration of the petition for rehearing filed by the appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT
Leonard Green, Clerk

◆

The Hon. James L. Graham, U.S. District Judge for the Southern District of Ohio, sitting by designation.

Case No 98-1726
United States Court of Appeals
For the Sixth Circuit

JOHN KOJO MENSAH
Plaintiff - Appellant

v.

ST. JOSEPH COUNTY FAMILY INDEPENDENT AGENCY; ST. JOSEPH COUNTY FAMILY COURT; RUTH LANE; MICHAEL A. MESTELLE
Defendant - Appellees

BEFORE: Siler and Gilman, Circuit Judges; Graham, District Judge

John Kojo Mensah, proceeding Pro se, appeals a district court order dismissing his civil rights complaint filed pursuant to 42 USC §§ 1983, 1985, and 1986. This case has been referred to a panel of the court pursuant Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P.34(a).

Seeking monetary and equitable relief, Mensah filed suit against the St. Joseph County, Michigan, Family Independent Agency, whose actual name is Family Independent Agency, (FIA) the St. Joseph County Family Court ("family court"); Ruth Lane, the maternal great-grandmother of his children, Michael A. Mestelle, an attorney who represented

him during child abuse/neglect proceedings in the family court; Cindy Theilin, an employee of the FIA; and Judge Thomas E. Schumaker, who presided over the family court proceedings. Mensah alleged that, pursuant to a divorce proceeding which he initiated, the Elkhart, Indiana, Superior Court awarded him custody of his two minor daughters following the death of their mother. However, Mensah claims that the defendants refused to honor the Indiana custody award and conspired to violate his civil rights by depriving him of the custody of his two minor children. Mensah also alleges that the defendants violated certain provisions of the Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction Act (UCCJA).

All of the defendants filed motions to dismiss, to which Mensah responded. On May 20, 1998, the district court granted the defendants' motions pursuant to Red. R. Civ. P. 12(b)(6). The district court dismissed the action on the following grounds: 1) Judge Schumaker is entitled to judicial immunity from suit; 2) the action, to the extent it seeks monetary relief, is barred by the Eleventh Amendment; 3) the action, to the extent it seeks injunctive relief, is barred by the *Rooker-Feldman* doctrine; 4) the domestic relations exception to the exercise of federal jurisdiction applies so as to bar consideration of the complaint; and 5) the conspiracy allegations are insufficient to support liability under § 1983 for civil rights violations by private individuals.

Mensah has filed a timely appeal in which he contends that the district court improperly dismissed his complaint for failure to state a claim upon which relief may be granted. The defendants request oral argument if this court deems it necessary. In addition, the defendants subsequently filed a motion to dismiss the appeal based upon Mensah's failure to file a joint appendix in compliance with Rule 30, Rules of the Sixth Circuit. Defendant Mestelle has requested attorney fees

in his brief. However, since Mestelle made his request in his brief and not in a separate motion, the request is denied. *See* Fed. R. App. P. 38.

This court reviews de novo a district court's dismissal of a suit pursuant to Fed. R. Civ. P. 12(b)(6). *See Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996), *cert. denied*, 520 U.S. 1251 (1997); *Wright v. MetroHealth Med. Ctr.*, 58 F.3d 1130,1138 (6th Cir. 1995), *cert. denied*, 516 U.S. 1158 (1996). When considering a Fed. R. Civ. P. 12(b)(6) motion to dismiss, "[t]he district court must construe the complaint in a light most favorable to the plaintiff, accept all of the factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief." *Columbia Natural Resources, Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995), *cert. denied*, 516 U.S. 1158 (1996); *see also Sistrunk*, 99 F.3d at 197; *Wright*, 58 F.3d at 1138. While a liberal construction of a complaint is contemplated by Fed. R. Civ. P. 12(b)(6), the court is not required to "accept as true legal conclusions or unwarranted factual inferences." *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987).

Upon review, we affirm the district court's order for some of the reasons stated by the district court. *See City Management Corp. v. U.S. Chem. Co.*, 43 F.3d 244, 252 (6th Cir. 1994) (this court "may affirm on any grounds supported by the record"). Because federal courts lack jurisdiction over Mensah's claims, the district court properly dismissed Mensah's complaint, as it fails to state a claim upon which relief may be granted. *See Sistrunk*, 99 F.3d at 197. Neither the UCCJA nor the PKPA provides a private right of action in federal court to determine the validity of two conflicting state custody decrees. *See Thompson v. Thompson*, 484 U.S. 174, 187 (1988); *DeMent v. Oglala Sioux Tribal Court*, 874 F.2d 510, 513 (8th Cir. 1989); *In re Larch*, 872 F.2d 66, 68

(4th Cir. 1989); *Becker v. California*, No 92-16676, 1994 WL 41073, at *1 (9th Cir. Feb 10, 1994)(unpublished memorandum). If Mensah felt aggrieved by the Michigan court order, his remedy was to appeal through the state courts. *See Thompson*, 484 U.S. at 187.

The district court also correctly declined to exercise jurisdiction over Mensah's civil rights claims because they involve domestic relations matters. *See Catz v. Chalker*, 142 F.3d 279, 290 (6th Cir. 1998). Federal courts have no jurisdiction to resolve domestic relations disputes involving divorce, alimony, or child custody. *See Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992). While Mensah attempts to assert a civil rights claim, his complaint clearly questions the underlying domestic relations issues by challenging the family court order granting temporary custody of his children to the FIA and specifically requesting the court to award custody of his children to him.

Because the domestic relations exception to the exercise of jurisdiction is dispositive of Mensah's complaint, it is not necessary to discuss the remaining grounds relied upon by the district court for dismissal of this case. Accordingly, the motion to dismiss is denied and the district court's order is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
Signed, Clerk

United States Senate
WASHINGTON, D.C. 20510-1404

[Address Omitted in Printing]

April 8, 1999

Mr. John Mensah
816 1/2 Fulton Street
Elkhart, IN 46514

Dear John,

I have been contacted by agency officials regarding my inquiry on your behalf, and have been advised that this matter is now being handled through the judicial system.

I hope you can understand that under our constitutional procedure, it is improper, and may be illegal, for me, as a legislator, to intervene in a court action. Any action I would take would be construed as interference with the responsibilities of other officials, and could be counterproductive to you.

I would suggest that you discuss these matters with legal counsel to determine what, if any, recourse you might have available to you. I regret I cannot be of assistance to you in this legal matter.

Sincerely,
/s/ Evan Bayh
Evan Bayh
United States Senator

EB:cp

United States Senate
WASHINGTON, D.C. 20510-1404

[Address Omitted in Printing]

June 7, 1999

Mr. John Mensah
816 1/2 Fulton Street
Elkhart, IN 46514

Dear Mr. Mensah,

I am writing in reference to the concerns you expressed regarding your personal experiences with the U.S. Immigration and Naturalization Service, and the Central Intelligence Agency.

It appears that this matter does not fall within my jurisdiction, and that you have appropriately sought relief through the judicial system. I would suggest that you continue to pursue legal counsel to address your concerns.

I regret that it is not possible for me to assist you.

Sincerely,
/s/ Carl Levin
Carl Levin
CL/ec

Congress of the United States
House of Representatives
WASHINGTON, D.C. 20515-1403

[Address Omitted in Printing]

February 8, 1999

John Mensah
816 1/2 Fulton Street
Elkhart, IN 46514

Dear Mr. Mensah,

Thank you for your letter concerning your request for a Private Relief Billing reference to your experiences with the U.S. Immigration Service and the Central Intelligence Agency.

This is obviously a situation which you have invested much time and effort. I am aware you have already spoken with Pete, Ryan, and Hodge of my staff about your case. It is clear from our contacts with you that you are concerned for the welfare of your family. As a father and husband, I share your concerns and appreciate your desire to end this problem.

Your case should be reviewed by an attorney. I regret that I am unable to help you in this matter and wish you the best of luck in resolving it.

Sincerely,
Tim Roemer
Member of Congress

TR:jh:dohrp

Office of the Vice President
WASHINGTON

[Address Omitted in Printing]

September 3, 1997

Mr. John Kojo Mensah
417 West Franklin Street
Elkhart, Indiana 46516-2766

Dear Mr. Mensah & Family:

Thank you for writing to Vice President Gore with your special inquiry. I am pleased to respond on his behalf.

Although the Vice President would like to fulfill every request made of him and specifically answer every question, the many demands on his time prevent him from doing so. Even so, I know that he appreciates greatly the support of the American people and their interest in him and his work.

Please be assured that the Vice President is working closely with President Clinton to accomplish these goals of particular importance to the American people--a more efficient government, an improved economy, a cleaner environment, and better future for our nation.

Again, thank you for taking the time to write to his office.

Sincerely,
/s/ Bill Mason
Bill Mason
Director of Correspondence
for the Vice President

BM/cco

APPENDIX

[SEAL]

United States Department of Justice
Immigration and Naturalization Service

Eastern Regional Office
70 Kimball Avenue
South Burlington, VT 05403-6813
ER 50/42

May 2, 1995

Mr. John Kojo Mensah
c/o Kathleen J. Raiger, Director
Webster University Graduate
Study Center
Regents College, Regents Park
Inner Circle, London, NW1 4NS
United Kingdom

Dear Mr. Mensah,

Your letter of January 15 addressed to the Commissioner, and its attachments were forwarded to the attention of Detroit District Director Carol Jennifer for review and appropriate action.

Please be assured, however, that the Immigration & Naturalization Service (INS) does not employ an illegal underground network of criminals in England which conducts surveillance upon your activities, as you allege. Your repeated mention of surveillance activities overseas upon you, have no relation with the INS.

If we may be of further assistance, please do not hesitate to contact this office.

Sincerely,
/s/ William F. Glinka
WILLIAM F. GLINKA
Assistant Regional Director

ELKHART COUNTY HEALTH UNIT

THIS IS TO CERTIFY, that our records show REBECCA ADOWA MENSAH died OCTOBER 28, 1997 at 7:59 AM, CR 133 NORTH OF CR 4, BRISTOL, IN

Married ____ Widowed ____ Single ____ Divorced ____

Age at death: 26 years Sex: FEMALE

Primary cause of death given was: BROKEN NECK; CAR-TRAIN ACCIDENT

Signed by: JEANETTE K. ALBERT, Physician or Coroner, 505 BRANDYWINE DR., GOSHEN, IN 46526

Place of burial or removal: RIVERSIDE CEMETERY, THREE RIVERS, MICHIGAN.

Date of Burial: 10/31/1997 Funeral Director: RIETH-ROHRER-EHRET, 311 S. MAIN ST., GOSHEN, IN

(SEAL)

signed: J.W. BIGLER, MD, Commissioner of Health, ELKHART, INDIANA FEBRUARY 1, 1999

Recorded locally: 97-1139

When filed: OCTOBER 30, 1997

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JOHN KOJO MENSAH,	)	
Plaintiff	)	
v.	)	Cause No. 3:98-CV-360RM
UNITED STATES OF AMERICA	)	
Defendants	)	

MEMORANDUM AND ORDER

This is the most recent installment in a sense of cases brought by John Kojo Mensah concerning his belief that federal agencies are engaged in sinister activities against him.[1] He alleges that the Central Intelligence Agency and the Immigration and Naturalization Service have orchestrated a "campaign of terror" against him since 1985. Mr. Mensah alleges that these agencies continue to terrorize him with tactics such as arrest traps, plots of entrapment, acts of inducement, death threats and thermal imaging surveillance Mr. Mensah seeks preliminary and permanent injunctive relief against the United States enjoining its agents from continuing these activities. The United States has filed a motion asking the court to appoint a guardian ad litem to represent Lucy and Lethia Mensah, Mr. Mensah's children whom he names as additional plaintiffs in this latest case. For reasons that follow, the court denies Mr. Mensah's request for injunctive relief, dismisses the complaint and orders Mr. Mensah to show cause why the court should not impose sanctions.

The complaint alleges the same facts against the same defendants that were alleged in 97CV159, 98CV62 and 98CV63. In light of the decision in Mr. Mensah's last case, the current complaint is vexatious, frivolous, duplicative,

unfounded and improper. 28 USC § 1927 provides: "Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses and attorneys' fees reasonably incurred because of such conduct," Rule 11 of the Federal Rules of Civil Procedure provides:

> By presenting to the court (wether by signing, filing, submitting or later advocating) a pleading, written motion or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances.--
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

Section (c) of Rule 11 authorizes the court to fashion a sanction "sufficient to deter repetition of such conduct" and may include the imposition of monetary fines.

These provisions are self explanatory, as is their apparent application to Mr. Mensah's filing under a new case number

a case that the court has already dismissed. Therefore, the court:

1. DISMISSES the complaint (filed July 14, 1998 (docket #1):

2. DIRECTS the clerk of the court to enter judgement in favor of the defendant; and

3. GRANTS Mr. Mensah 30 days to show cause why the court should not impose sanctions for violations of 28 USC § 1927 and Fed. R.Civ.P. 11 and why the court should not order Mr. Mensah to file no further cases in this court against these defendants based on these facts.

SO ORDERED

ENTERED: August 17, 1998

/s/ Robert L. Miller, Jr., Judge
United States District Court

Case No. 1:98-CV-146
United States District Court
for the Western District of Michigan
Southern Division

JOHN KOJO MENSAH
Plaintiff

v.

ST. JOSEPH COUNTY FAMILY INDEPENDENT AGENCY, MI; ST. JOSEPH COUNTY FAMILY COURT, RUTH LANE, ATTORNEY MICHAEL A. MESTELLE,
Defendant

BEFORE: Hon. Gordon J. Quist, *United States District Judge*

ORDER

In accordance with the Opinion entered this date,

IT IS HEREBY ORDERED that Defendants St. Joseph County Family Independent Agency's, St. Joseph County Family Court's and Judge Thomas Shumaker's Motion To Dismiss (docket no. 5) is **GRANTED.**

IT IS FURTHER ORDERED that Defendant Ruth Lane's Motion To Dismiss and Motion For Attorney Fees (docket no. 11) and Defendant Michael A. Mestelle's Motion To Dismiss (docket no. 13) are **GRANTED.**

IT IS FURTHER ORDERED that within fourteen (14) days of this Order, Defendant Lane and Mestelle shall file statements showing the amount of attorney fees actually incurred in defending this action, including the hourly rate and the amount of time incurred. Plaintiff shall have ten (10) days from the date of filing to submit any objections to the amount of fees claimed.

Dated: March 10, 1998

/s/ Gordon J. Quist
United States District Judge

OPINION

This civil rights action appears to arise out of a child abuse/neglect proceeding initiated by Defendant St. Joseph County Family Independent Agency[1] ("FIA") against Plaintiff, John Kojo Mensah, in the St. Joseph County Family Court Division of the St. Joseph County Circuit Court. Plaintiff originally filed this case in pro per in the Northern District of Indiana on that court's form complaint for claims under 42 USC § 1983. By order dated February 11, 1998, the Indiana court transferred the case to this Court pursuant to the venue statute, 28 USC § 1391, on the ground that all of the defendants were located within this district. Now before the Court are Defendants FIA's, St. Joseph County Family Court's, and Judge Thomas Shumaker's joint motion to dismiss, Defendant Michael A. Mestelle's motion to dismiss, and Defendant Ruth Lane's motion to dismiss.

Facts

Sometime during 1997, Plaintiff, a resident of Elkhart, Indiana, filed a complaint for divorce from his wife in Elkhart County Superior Court. At the time, Plaintiff's wife had been living in Michigan for several months along with their two children. While the divorce was still pending, Plaintiff's wife was killed in a tragic train-car collision. Soon thereafter, the FIA filed a child neglect/abuse petition in the St. Joseph County Family Court, alleging that Plaintiff was delusional and suffered from a psychiatric disorder. The case was assigned to Defendant Judge Thomas E. Shumaker. On February 12, 1998, Judge Shumaker held a trial on the petition, at the conclusion of which the jury found that Plaintiff neglected his children. On February 13, 1998, Judge Shumaker entered an order referring Plaintiff's children to the Michigan FIA for placement and care and directing Plaintiff to obtain a psychological evaluation. Pursuant to Judge Shumaker's order, the FIA placed the children with Defendant Ruth Lane ("Lane"), their maternal great-grandmother.

Standard for Dismissal

An action may be dismissed if the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b) (6). The moving party has the burden of proving that no claims exists. Although a complaint is to be liberally construed, it is still necessary that the complaint contain more than bare assertion of legal conclusions. Allard v. Weitzman (In re DeLorean Motor Co.), 991 F.2d 1236, 1240 (6th Cir. 1993) (citing Scheid v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 436 (6th Cir. 1998)). All factual allegation in the complaint must be presumed to be true, and reasonable inferences must be made in favor of the non-moving party. 2 James W. Moore, Moore's Federal Practice, ¶ 12.34 [1] [b] (3d ed. 1997). The court need not, however, accept unwarranted factual inferences. Morgan v. Church's Fried Chicken, 829 F.2d 10, 12 (6th Cir. 1987). Dismissal is proper "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 US 69, 73, 104 S.Ct. 2229, 2232 (1984).

Dismissal is also proper if the complaint fails to allege an element necessary for relief or "if an affirmative defense or other bar to relief is apparent from the face of the complaint, such as the official immunity of the defendant..." 2 James W. Moore, Moore's Federal Practice, ¶ 12.34[4][b] (3d ed. 1997).

In practice, "a...complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." Allard, 991 F.2d at 1240 (quoting Scheid, 859 F.2d at 436.

Discussion

Plaintiff's allegations in support of his § 1983 claim are rambling and, in places, incoherent. However, the heart of this complaint is an alleged conspiracy among the Detroit office of the Immigration and Naturalization Service ("INS"), Defendants, and numerous non-parties, including the prosecuting attorney's, sheriff's deputies, court clerks and even the jury in the child neglect proceeding, formed to deprive

Plaintiff of custody of his children. For the reasons set forth below, the Court finds that all Defendants are entitled to dismissal.

I. Motions To Dismiss

A. Judge Shumaker

As noted above, Judge Shumaker was the probate judge who presided over the neglect proceedings. The allegations in the complaint regarding Judge Shumaker relate to his participation in the child neglect proceedings in his office as a family court judge. Based upon these allegations, Judge Shumaker is entitled to judicial immunity. Judicial immunity provides immunity to judges for all acts taken in their judicial capacities in § 1983 actions. Stump v. Sparkman, 435 U.S. 349, 355-56, 98 S.Ct. 1099, 1104 (1978). "[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages." Mireles v. Waco, 502 U.S. 9, 11, 112 S.Ct. 286, 288 (1991) (per curiam) (citing Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815 (1985)). Judicial immunity is lost only where the judge's acts are non-judicial in nature or where the acts, even if judicial in nature are taken " 'in the complete absence of all jurisdiction.' " Mann v. Conlin, 22 F.3d 100, 103 (6th Cir. 1994) (quoting Mireles, 502 U.S. at 12, 112 S.Ct. at 288))

Plaintiff has not alleged in his complaint any act by Judge Shumaker in any capacity other than as a judge. However, Plaintiff asserts that Judge Shumaker did not have jurisdiction over the neglect proceeding. Plaintiff's sole basis for this argument is the Parental Kidnapping Prevention Act of 1980 ("PKPA"), 28 USC § 1738A. Plaintiff's reliance on the PKPA is misplaced. The PKPA was enacted to discourage parents embroiled in custody disputes from kidnapping their children and taking them to other states to obtain favorable rulings by requiring the states to give full faith and credit to other states' custody determinations. See 28 USC § 1738A(a), (g); see also Hooks v. Hooks, 771 F.2d 935, 941 n.6 (6th Cir. 1985). The PKPA is inapplicable in this case because Plaintiff has not alleged that there was another custody order by

another state in place at the time the Michigan proceeding was initiated.

B. FIA and St. Joseph County Family Court

Plaintiff's claims against the FIA and the St. Joseph County Family Court are barred by the Eleventh Amendment to the United States Constitution, which provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. amend. XI. It is well established that the amendment prohibits suits by a citizen against his own state. Macklin v. Huffman, 976 F.Supp. 1090, 1093 (W.D. Mich. 1997). The state sovereign immunity doctrine set forth in the Eleventh Amendment bars suits against states in federal court, regardless of the type of relief sought. Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S 139, 144, 113 S.Ct. 684, 687 (1993). The amendment also bars suits against a state's departments and its officials in their official capacities. Thiokol Corp. v. Department of Treasury, 987 F.2d 376, 381 (6th Cir. 1993).

The St. Joseph County Family Court, as a part of the state court system, is immune from suit in federal court. See M.C.L. § 600.1001 (creating family division of circuit court). Likewise, the FIA is a department of the State of Michigan. See M.C.L. § 400.1(1) (creating family independence agency as department of State of Michigan). Therefore, the FIA is also immune from suit under the Eleventh Amendment. See Lintz. v. Skipski, 807 F.Supp. 1299, 1303 (W.D. Mich. 1992) (finding Cass County Department of Social Services immune), aff'd, 25 F.3d 304 (6th Cir. 1994); Maloney v. Wentz, No. 1:97-CV-816, slip op. at 11 n.3 (W.D. Mich. Mar. 16, 1998) (holding FIA immune under Eleventh Amendment).

Plaintiff argues that the exception to Eleventh Amendment immunity under Ex Parte Young, 209 U.S. 123, 28 S.Ct.

441 (1908) applies in this case. In Ex Parte Young, the Court held that where a state officer's actions are violating or will violate the federal Constitution, those actions are outside the state's authority and "[t]he state has no power to impart to him any immunity from responsibility to the supreme authority of the United States." Id. at 160, 28 S. Ct. at 454. The Ex Parte Young rule would not apply to Plaintiff's damage claim, but might apply to his request for injunctive relief. Thiokol, 987 F.2d at 381. However, the Court finds Ex Parte Young inapplicable in this case for two reasons. First, Ex Parte Young, applies only to suits against state officials in their official capacities. See Doe v. Wigginton, 21 F.3d 733, 737 (6th Cir. 1984) (suit against prison officials for prospective injunctive relief deemed not against state); Sault Ste. Marie Tribe of Chippewa Indians v. Michigan, 5 F.3d 147, 149 (6th Cir. 1993) (noting that Ex Parte Young allows suits against individually named state officials). Plaintiff's claims for injunctive relief are against the FIA and the St. Joseph County Family Court and thus do not implicate Ex Parte Young.

A second and more compelling reason why Ex Parte Young does not apply in this case is that the injunctive relief sought by Plaintiff in this case is barred under the Rooker-Feldman doctrine. The doctrine, which has its roots in the Supreme Court's decisions in District of Columbia of Appeals v. Feldman, 460 U.S 462, 103 S.Ct. 1303 (1983) and Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149 (1923), provides that federal district courts are without authority to review final judgements of state courts in judicial proceeding. Sun Valley Foods Co. v. Detroit Marine Terminals, Inc. (In re Sun Valley Foods Co.), 801 F.2d 186, 189 (6th Cir. 1986). Under Feldman, United States district courts have subject matter jurisdiction to entertain general challenges to the validity of rules promulgated in a nonjudicial proceeding but do not have subject matter jurisdiction to entertain "challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional." 460 U.S. at 486, 103 S.Ct. at 1317.

In this case, Plaintiff's request for custody of his children is inextricably intertwined with the state court's determination and would, if granted, have the effect of overturning the state court's judicial determination. Plaintiff's attempt to cast his claim as a civil rights violation does not avoid this result. See Ritter v. Ross, 992, F.2d 750, 754 (6th Cir. 1993). The Rooker-Feldman doctrine therefore precludes the injunctive relief requested by Plaintiff.

C. Defendants Lane and Mestelle

Defendant Lane and Defendant Michael A. Mestelle ("Mestelle"), an attorney who apparently represented Plaintiff in the neglect proceeding, contend that dismissal is proper based upon federal courts' traditional reluctance to accept jurisdiction over domestic relations or custody disputes under state law. See, e.g., Zak v. Pilla, 698 F.2d 800, 801 (6th Cir 1982) (per curiam) ("Federal courts traditionally decline to accept jurisdiction in parent-child, domestic relations or custody disputes and in adoption matters which are subject to state law and state court disposition"). The exception does not apply, however, where the action alleges a civil rights claim and does not put in issue the underlying domestic relations ruling or issues. Hooks, 771 F.2d at 942.

In this case, while Plaintiff filed his complaint on a form civil rights complaint and alleged that Defendants and others conspired with the INS to deprive him of custody of his children, this Court reads Plaintiff's complaint to be seeking review of the state court's custody determination through the guise of a § 1983 action. Plaintiff requests relief of "immediate release of his children into his care." (See Compl. at 8.) Plaintiff's use a § 1983 action for that purpose cannot be sustained. See Ritter, 992 F.2d at 754 (landowners precluded from seeking review of state court foreclosure judgement through purported civil rights complaint); Starks v. Starks, No. 96-3201, 1997 WL 35576, at *1 (6th Cir. Jan. 29, 1997) (finding dismissal of plaintiff's complaint proper where claims pled as due process violations sought reconsideration of state court division of marital property). Moreover, Plaintiff's com

plaint cannot be sustained as a claim that he was deprived of a constitutional or other federal right because Plaintiff fails to allege that Defendants violated any specific federal right.[2] Likewise, Plaintiff's allegations of an extensive conspiracy between Defendants Lane and Mestelle and the INS are conclusory and "lack the requisite material facts and specificity necessary to sustain a conspiracy claim." Guierrez v. Lynch, 826 F.2d 1534, 1539 (6th Cir. 1987). Therefore, dismissal of Plaintiff's claims against Defendant Lane and Mestelle is proper.

II. Attorney Fees Motions

Defendants Lane and Mestelle have moved for an award of attorney fees against Plaintiff under the Court's inherent power to assess fees against a party who has ' "acted in bad faith, vexatiously, wantonly, or for oppressive reasons.' " Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 258-59, 95 S.Ct. 1612, 1622 (1975) (quoting F.D. Rich Co. v. United States ex rel. Indus. Lumber Co., 417 U.S. 116, 129, 94 S.Ct. 2157, 2165 (1974)). Pursuant to this Court's Order of March 6, 1998, directing Plaintiff to respond to the pending motions to dismiss, Plaintiff was given the opportunity to respond to Defendants' request for an award of attorney fees. See Ray A. Scharer & Co. v. Plabell Rubber Prods., Inc., 858 F.2d 317, 321 (6th Cir. 1988) (court must afford minimal due process protections before imposing sanctions).[3] In considering whether a party acted in bad faith, courts focus on the party's subjective bad faith rather than upon the merits of the claim. See Rothenberg v. Security Management Co., 736 F.2d 1470, 1472 (11th Cir. 1984) (per curiam); Eisenman v. Peora (In re Peoro), 793 F.2d 1048, 1051-52 (9th Cir. 1986) (recognizing connection between merits and party's subjective motivation).

Plaintiff filed this suit against various defendants under § 1983 after a jury concluded in state court proceedings that he was unfit to care for his children. Plaintiff alleged in his § 1983 complaint that he was deprived of custody as a result of a massive conspiracy orchestrated by the INS, whose partici

pants included, but were not limited to, the judge, the court, the state agency, court clerks, sheriff's deputies, prosecutors, Plaintiff's own attorney, and perhaps most incredibly, the jury, which consisted of randomly-selected residents of St. Joseph County. Apart from the facts that at least three Defendants had absolute defenses and Plaintiff's civil rights claim was essentially a collateral attack on the state court proceeding, both of which were apparent from the face of his complaint, Plaintiff failed to support his fanciful allegations of an immeasurable conspiratorial network with specific facts tending to show even a remote possibility that they were true.

Based upon the facts in this case, the Court finds that Plaintiff has acted in bad faith in filing this action and that his conduct supports an award of attorney fees under this Court's inherent powers. This conclusion is buttressed by Plaintiff's failure to appeal the jury verdict to the Michigan Court of Appeals, a tribunal that is free of the influence of the INS, as well as Plaintiff's failure to name the INS – the driving force of the alleged unlawful conspiracy – in this purported federal civil rights action.

Lane has requested an award of attorney fees in the amount of $500.00. Mestelle has not requested a specific amount.[4] However, neither Defendant has submitted proof showing the amount of fees incurred. Therefore, the Court will allow Lane and Mestelle to submit proof of the hourly rate and the amount of time spent in preparing their motions. Plaintiff will be given the opportunity to object to the amount of fees claimed.

Conclusion

For the foregoing reasons, the Court will grant Defendants' motions to dismiss and Defendants Lane's and Mestelle's motions for attorney fees.

An Order consistent with this Opinion will be entered.

Dated: May 20, 1998

/s/ Gordon J. Quist
United States District Judge

Court of Appeals, State of Michigan

ORDER

In re Mensah minors
Docket No. 214053
LC. No. 97-000053

Donald E. Holbrook, Jr.
presiding Judge
Kathleen Jansen
William C. Whitbeck
Judges

The Court orders that the delayed application for leave to appel is DENIED for lack of merit in the grounds presented.

The motion for immediate considered is GRANTED.

A true copy entered and certified by Carl L. Gromek, Chief Clerk on Oct. 22, 1998